

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

MICHAEL JON LONG,

Plaintiff,

VS.

KELLY MARIE LONG, ET AL.,

Defendants.

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CIVIL ACTION NO. SA-21-CA-479-FB

**ORDER ACCEPTING REPORT AND RECOMMENDATION**  
**OF UNITED STATES MAGISTRATE JUDGE**

The Court has considered the Report and Recommendation of United States Magistrate Judge filed in the above-captioned cause on August 3, 2021 (docket #5). According to the CM/ECF system, the Report and Recommendation was mailed to the plaintiff on August 4, 2021 (docket #7), and the certified mail return receipt shows the Report and Recommendation was delivered to the addressee, Michael Jon Long, on August 7, 2021 (docket #8). To date, the docket sheet reflects no objections to the Report and Recommendation have been received.<sup>1</sup>

Because no party has objected to the Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). The Court has reviewed the Report and finds its

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<sup>1</sup> Any party who desires to object to a Magistrate's findings and recommendations must serve and file his, her or its written objections within fourteen days after being served with a copy of the findings and recommendation. 28 U.S.C. § 635(b)(1). If service upon a party is made by mailing a copy to the party's last known address, "service is complete upon mailing ." FED. R. CIV. P. 5(b)(2)(C). If service is made by electronic means, "service is complete upon transmission." *Id.* at (E). When the mode of service is by electronic means, three days are no longer added to the time period to act after being served. *See Heverling v. McNeil Consumer Pharmaceuticals, Co.*, Civil Action No. 1:17-CV-1433, 2018 WL 1293304 at \*2 n.3 (M.D. Pa. Mar. 13, 2018) ("On April 28, 2016, the Supreme Court adopted changes to the Federal Rules of Civil Procedure. In pertinent part, the Court amended Rule 6(d) to remove 'electronic means' as a mode of service triggering an additional three days to act when a responsive period commences upon service. *See* FED. R. CIV. P. 6, advisory committee's note to 2016 amendment. The amendments took effect on December 1, 2016.").

reasoning to be neither clearly erroneous nor contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989). The Recommendation shall therefore be accepted pursuant to 28 U.S.C. § 636(b)(1) such that Plaintiff Long's case shall be **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915(e) and for failure to state a claim upon which relief may be granted. In addition, Plaintiff Long's request for emergency injunctive relief shall be **DENIED**.

Accordingly, it is hereby ORDERED that the Report and Recommendation of United States Magistrate Judge filed in this cause on August 3, 2021 (docket #5), is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that Plaintiff Long's case is **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915(e) and for failure to state a claim upon which relief may be granted. Plaintiff Long's request for emergency injunctive relief is also **DENIED**. IT IS FURTHER ORDERED that motions pending, if any, are also **DISMISSED**, and this case is **CLOSED**.

It is so ORDERED.

SIGNED this 26th day of August, 2021.

  
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FRED BIERY  
UNITED STATES DISTRICT JUDGE